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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO MOCTEZUMA,

Defendant and Appellant.

B263651

(Los Angeles County
Super. Ct. No. BA398907)

APPEAL from a judgment of the Superior Court of Los Angeles County. George G. Lomeli, Judge. Affirmed.

Thomas T. Ono, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Noah P. Hill and David Williams, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Ricardo Moctezuma appeals from a judgment sentencing him to 15 years to life in a state prison after a jury found him guilty of murder. Moctezuma argues (1) insufficient evidence supported the judgment and (2) the trial court erred in not instructing the jury on self-defense. We disagree and affirm.

BACKGROUND

On the night of June 5, 2011, about 100 partygoers gathered in East Los Angeles for a birthday celebration. Music, a dance floor, and alcohol fueled the raucous festivities. Although attendees characterized the gathering as invite-only, no one guarded the entrance. Moctezuma was not invited to the party; he heard about it while at a different party, where he was drinking, from a deejay who was going to the birthday party next. Moctezuma arrived drunk. He parked and waited outside the house. A car of females approached the house looking for parking. Moctezuma offered to, and did, pull his car forward to allow the driver to park behind him. As the women began toward the house, Moctezuma asked if he could walk into the party with them. They repeatedly told him “no” because the party was private. Moctezuma ignored them and walked in behind them, carrying a bottle of vodka. By this point he was admittedly already so inebriated he was “in a daze” and later could recall only “flashes” of what occurred next.

Moctezuma approached Dyanna Najar as she was dancing. Although witnesses disagreed as to how exactly the interaction between Najar and Moctezuma transpired, they agreed that at some point Najar’s ex-boyfriend, Ivan Anders, saw Moctezuma in close proximity with Najar. Anders pushed Moctezuma away from Najar. When it appeared Anders and Moctezuma might fight, partygoers separated them. As Anders walked away, witnesses describe Moctezuma staring at him with “really, really angry eyes.”

Moctezuma testified that after this altercation he felt “scared, angry, nervous, [and] lost” but, despite remaining “stuck in those thoughts” and not “thinking straight,” he stayed at the party. Moctezuma then somehow acquired a knife, even though he did not bring one to the party and cannot remember where he got it. Witnesses next saw Moctezuma quickly pacing about. At one point he ran inside a room where people were congregated and looked around; witnesses saw him holding an object behind his back and under his shirt. Some minutes later, Moctezuma and Anders spotted each other near the exit. Moctezuma testified Anders looked at him “with an aggression,” but they did not exchange words and Anders did not make any physical motions toward Moctezuma. According to his testimony, “out of fear” of “being jumped, being beaten up,” Moctezuma walked to Anders, removed a knife from his back pocket, and stabbed Anders in his abdomen.

Moctezuma immediately fled. As he ran, several individuals attempted to pursue him. Moctezuma was too fast, however. Dropping the knife in the street, he hopped in his car and sped away, hitting the cars in both front and back of his in his haste. By this time, Anders had stumbled outside of the house and collapsed. Although various individuals tried administering to him and the paramedics transported him to a hospital, he died as a result of the stab wound.

A few days later, Moctezuma’s mother, Dalia Moctezuma, took Moctezuma’s car to a body shop. Moctezuma’s mother asked the shop to change the car’s color and correct damage to the car’s bumpers and right front panel. The shop did, but Moctezuma’s mother never retrieved the car; the shop later sold it in a lien sale. Law enforcement did not apprehend Moctezuma until almost a year later because he maintained a low profile to avoid detection.

On May 2, 2013, the district attorney filed an information against Moctezuma, charging him with one count of murder under Penal Code section 187, subdivision (a), and alleging he personally used a deadly or dangerous weapon during the commission of the offense. Moctezuma pleaded not guilty and denied the allegation. A jury found Moctezuma guilty of second degree murder and found the personal use allegation to be true. On April 16, 2015, the court sentenced Moctezuma to 15 years to life in a state prison, plus 1 year for the deadly and dangerous weapon enhancement. Moctezuma appealed.

DISCUSSION

On appeal, Moctezuma contends (1) insufficient evidence supported the judgment and (2) the court erred in not instructing the jury on self-defense. We disagree.

Under a substantial evidence test, we determine whether the prosecution presented evidence “reasonable, credible and of solid value” such that any rational jury could have found the defendant guilty of the elements of the charged crime beyond a reasonable doubt. (*People v. Perez* (1992) 2 Cal.4th 1117, 1124, 1126; *People v. Fierro* (2010) 180 Cal.App.4th 1342, 1347.) The conviction here is for second degree murder. Second degree murder is the unlawful killing of a human being with malice aforethought. (Pen. Code, § 187, subd. (a); *People v. Swain* (1996) 12 Cal.4th 593, 600.) Malice aforethought can be express or implied. (Pen. Code, § 188.) Express malice requires an intent to kill. (*Ibid.*) Implied malice requires an intentional act performed with conscientious disregard for human life. (*Ibid.*; *People v. Blakely* (2000) 23 Cal.4th 82, 87 (*Blakely*)). In a substantial evidence inquiry, “it is the exclusive province of the . . . jury to determine the credibility of a witness and the truth or falsity of the facts,” and it is not for

us to substitute our judgment for that of the jury's. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We review the record in the light most favorable to the judgment and “‘presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’” (*People v. Johnson* (1980) 26 Cal.3d 557, 576.)

We review jury instructions de novo. (*People v. Cruz* (2016) 2 Cal.App.5th 1178, 1183.)

A. Sufficient evidence supports that Moctezuma murdered Anders

Moctezuma does not deny he stabbed Anders. Instead, he denies he had the requisite “malice aforethought.” The Attorney General counters Moctezuma demonstrated both express and implied malice. We need not consider both, however, and address only implied malice.

“Implied malice may be proven by circumstantial evidence and has both a physical and mental component. [Citation.] The physical component is satisfied by the performance of an act, the natural consequences of which are dangerous to life. [Citation.] The mental component is established where the defendant knows that his conduct endangers the life of another and acts with conscious disregard for life.” (*People v. McNally* (2015) 236 Cal.App.4th 1419, 1425; see also Pen. Code, § 188; *Blakely, supra*, 23 Cal.4th at p. 87.) A conscientious disregard for life requires a showing of the defendant’s subjective “awareness of the risk to life created by his conduct.” (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1218.) We consider each of the three elements.

First, Moctezuma acted intentionally. Although he testified he cannot remember how he procured the murder weapon, he admits that he knew he had the weapon before he stabbed Anders; after seeing Anders, affirmatively walked toward him; and as soon as he reached Anders, purposefully stabbed

him. Moreover, Moctezuma admits that the reason he walked toward and then stabbed Anders was because he was scared Anders might “jump” him. Also, just before the stabbing, witnesses at the party saw Moctezuma quickly pacing about and looking around while holding an object behind his back and under his shirt. Nothing about the manner in which Moctezuma stabbed Anders suggests it was accidental or unpreventable. In fact, Moctezuma’s choice to walk toward Anders suggests the opposite: Moctezuma wanted to, and so did, stab Anders.

Second, the natural consequences of stabbing a victim in the abdomen are dangerous to human life. The abdomen houses numerous vital internal organs and is home to a network of major arteries, a puncture or slash to any one of which has a high probability of death. Stabbing is often fatal and although, as the coroner testified, an abdominal stabbing is not *necessarily* fatal, the ability of a perpetrator to predict or control when the stabbing to such a complicated area will be fatal is low. That is, an unskilled drunk man cannot stab almost five inches into the unprotected abdomen of another without inherently risking the other’s life.

Third, as to whether Moctezuma had a conscientious disregard for human life, Moctezuma argues the “totality of the trial evidence” did not “prove that [he] subjectively appreciated that his conduct endangered Anders’ life,” but rather showed, at most, only “an awareness of the risk of causing serious bodily injury.” (See *People v. Knoller* (2007) 41 Cal.4th 139, 143.) Moctezuma’s argument fails for two reasons. First, Moctezuma’s briefing implies his testimony that he never intended to kill Anders shows he lacked a subjective belief. The subjective element of the implied malice standard, however, does not require that the defendant *intended* to kill the victim. Rather, it requires only that Moctezuma knew there was a risk his

intentional actions could lead to Anders's death. (*Blakely, supra*, 23 Cal.4th at p. 87.) Second, the jury had sufficient evidence to conclude Moctezuma did subjectively know stabbing Anders might kill him. That is, the jury was free to disregard Moctezuma's self-serving statements that he did not intend to kill Anders and weigh the evidence regarding the manner in which he stabbed Anders as proof that he intended to harm Anders and knew death was a possible result of that harm. (See, generally, *People v. Torres* (1963) 214 Cal.App.2d 734, 738–739 [circumstances surrounding and manner of a stabbing which occurred after a fight supported a jury's implied malice finding].) For example, he acquired a knife; walked toward Anders; out of fear, conscientiously stabbed Anders almost five inches deep in his abdomen; and fled the scene. This evidence is sufficient to support the jury's implicit conclusion that Moctezuma knew stabbing Anders could end his life.

B. The court properly instructed the jury

Moctezuma also argues the court erred in refusing to instruct the jury on self-defense. We disagree. “ ‘ “The court should instruct the jury on every theory of the case, but only to the extent each is supported by substantial evidence.” ’ ” (*People v. Hill* (2005) 131 Cal.App.4th 1089, 1101, disapproved on other grounds in *People v. French* (2008) 43 Cal.4th 36, 48, fn. 5.) The evidence here was insufficient to support instructing on self-defense.

“For killing to be in self-defense, the defendant must actually and reasonably believe in the need to defend,” and that belief must be objectively reasonable (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082 (*Humphrey*)); that is, “the circumstances must be sufficient to excite the fears of a reasonable person” (Pen. Code, § 198). In addition, “the fear must be of imminent harm. ‘Fear of future harm—no matter how great the fear and no matter how great the likelihood of the harm—will not suffice. The

defendant's fear must be of *imminent* danger to life or great bodily injury.' ” (Humphrey, at p. 1082.) Here, Moctezuma's fear was not objectively reasonable. After partygoers pulled Moctezuma and Anders apart, Moctezuma and Anders did not remain in the same area. Moctezuma, however, did not use Anders's absence to immediately leave the party, despite testifying that he was “scared” Anders and his friends might jump him. Instead, Moctezuma stayed and witnesses saw him pacing and looking around while carrying something behind his back and under his shirt. After this lull, Moctezuma saw Anders, but Anders did not threaten, taunt, or even speak to Moctezuma. Nor did Anders take steps toward or make motions at Moctezuma; at best, if Moctezuma is to be believed, Anders—who, granted, was taller and heavier—gave Moctezuma only an aggressive look. A reasonable person would not have believed Anders posed a threat of “imminent harm” at that moment such that self-defense was justified, even considering the previous scuffle. (Humphrey, *supra*, 13 Cal.4th at p. 1082.) A reasonable person might have been nervous, agitated, or alarmed, but would not have thought an angry glance indicated immediate and life-threatening danger. We agree with the trial court's conclusion that Moctezuma's defense was best characterized as imperfect self-defense. The court instructed the jury on imperfect self-defense, and Moctezuma does not challenge those instructions. We therefore affirm.

DISPOSITION

The judgment is affirmed.

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LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.